

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

KEVIN ERNST DUCLAIRON,

NO. 3:12-cv-01753-HU

Plaintiff,

## FINDINGS AND RECOMMENDATION

V.

GABRIELLE FRANKLIN et al.

Defendant.

17 HUBEL, Magistrate Judge:

18 Before the court is plaintiff Kevin Ernst Duclairon's  
19 ("Plaintiff") application (Docket No. 1) to proceed *in forma*  
20 *pauperis*. Plaintiff's request to proceed *in forma pauperis* is  
21 granted solely for the purpose of this Findings and Recommendation.  
22 For the reasons stated herein, Plaintiff's complaint should be  
23 dismissed.

## Analysis

25 Plaintiff brought this civil rights action against Gabrielle  
26 Franklin, Guy Franklin, John MacArthur, Melinda MacArthur, and "the  
27 gay community/ Klan community." (Compl. at 2.) On the second page  
28 of his complaint. Plaintiff refers to Gabrielle Franklin and

1 Melinda MacArthur as "voice[s] in my head." (*Id.*) Plaintiff  
2 attempts to invoke federal question jurisdiction by claiming  
3 "Franklin [and] MacArthur" violated his constitutional rights by  
4 using the "gay Klan community" to force him to "live . . . the life  
5 of a homosexual, and raped fornicator with HIV." (*Id.* at 3.)  
6 Apparently, Plaintiff has "already lost this case in Seattle and  
7 twice in Portland seeking a stalking order [and] restraining  
8 order." (Mot. Appointment Counsel at 1.) The court could not find  
9 any previously filed federal cases by Plaintiff in the District of  
10 Oregon or the Western District of Washington on the Federal  
11 Judicial Public Access to Court Electronic Records ("PACER")  
12 Service. However, a search of the Washington state court database  
13 reveals at least two cases from King County Superior Court where  
14 Plaintiff unsuccessfully petitioned the court for an order to  
15 protect him from harassment and had his case dismissed.

16 It is well settled that district courts must dismiss an *in*  
17 *forma pauperis* action if it (1) is frivolous or malicious; (2)  
18 fails to state a claim on which relief may be granted; or (3) seeks  
19 monetary relief against a defendant is immune from such relief. 28  
20 U.S.C. § 1915(e)(2)(B); see also *Lopez v. Smith*, 203 F.3d 1122,  
21 1129 (9th Cir. 2000) (concluding that § 1915(e)(2)(B) applies to  
22 non-prisoners). In *Denton v. Hernandez*, 504 U.S. 25, 112 S. Ct.  
23 727 (1992), the Supreme Court explained that "a finding of factual  
24 frivolousness is appropriate when the facts alleged rise to the  
25 level of the irrational or the wholly incredible whether or not  
26 there are judicially noticeable facts available to contradict  
27 them." *Id.* at 33. Put another way, a case may be dismissed as  
28

1 factually frivolous when the facts alleged are "clearly baseless."

2 *Id.* at 32.

3 Plaintiff's allegations, on their face, are irrational to say  
4 the least. For example, under his first claim for relief,  
5 Plaintiff alleges that he is being "terroriz[ed] . . . mentally by  
6 voice" and raped nightly in his sleep. (Compl. at 3.) Plaintiff  
7 also claims that the "gay and Klan community" have been watching  
8 him, and that Gabrielle and Guy Franklin "demand[ed] slavery,  
9 submission, ma[de] death threats, [and] demand[ed] [Plaintiff's]  
10 return to Haiti." (*Id.*) In support of his second claim for  
11 relief, Plaintiff alleged that a "representative from the gay  
12 community [is being used] to drive [him] out of every American  
13 establishment." (*Id.* at 5.) Plaintiff then suggests he has been  
14 injected with sedatives and that "mind conversations [are] leading  
15 [him] to homosexuality by hits, force destroying [his] property,  
16 death threats, being jumped by Mexicans in Seattle because [he]  
17 refused to submit." (*Id.*) Under his third claim for relief,  
18 Plaintiff alleges that John MacArthur and Gabrielle Franklin want  
19 to make Plaintiff their slave and keep him "under white supremacy  
20 and homosexual to never marry or have a family or church ministry  
21 of [his] own." (*Id.*) In terms of relief, Plaintiff requests,  
22 among other things, that "MacArthur/ Franklin & gays" replace  
23 several vehicles they destroyed.

24 In short, the court has determined that the facts alleged in  
25 Plaintiffs complaint "rise to the level of irrational or the wholly  
26 incredible." *Denton*, 504 U.S. at 33. Plaintiff's complaint should  
27 therefore be dismissed.

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## Conclusion

2 For the reasons set forth above, Plaintiff's complaint is  
3 frivolous and should be dismissed. See 28 U.S.C. §  
4 1915(e)(2)(B)(i). Because it is apparent from the face of the  
5 complaint that the deficiencies cannot be cured by amendment,  
6 dismissal of the complaint should be with prejudice. *Karim-Panahi*  
7 v. *Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988);  
8 *Noll v. Carlson*, 809 F.2d 1446, 1447 (9th Cir. 1987). In addition,  
9 the court should certify that any appeal from the dismissal of this  
10 proceeding would not be taken in good faith. See 28 U.S.C. §  
11 1915(a)(3).

## Scheduling Order

13        The Findings and Recommendation will be referred to a district  
14    judge.    Objections, if any, are due **February 13, 2013**.    The  
15    Findings and Recommendation will go under advisement on **February**  
16    **13, 2013**.

17 Dated this 25th day of January, 2013.

s/ Dennis J. Hubel  
DENNIS J. HUBEL  
United States Magistrate Judge